



FSO-132-06

# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

L. Preston Bryant, Jr.  
Secretary of Natural Resources

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David K. Paylor  
Director

Jeffery A. Steers  
Regional Director

## STATE AIR POLLUTION CONTROL BOARD

### ORDER BY CONSENT

### ISSUED TO

**Superior Paving Corp.**  
**DEQ Air Facility Registration No. 41041**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 10.1-1307 D, § 10.1-1309 and 10.1-1316 C, between the State Air Pollution Control Board ("SAPCB") and the Superior Paving Corporation for the purpose of resolving certain alleged violations of the Air Pollution Control Law and/or regulations as specified in Section C of this Order.

#### **SECTION B: Definitions**

Unless the context indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. "CFR" means The Code of Federal Regulations.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality.
6. "Facility" means Superior Paving – Culpeper Plant, 18244 Germanna Highway, Culpeper, Virginia (Culpeper County).
7. "Portable RAP Plant" means portable recycled asphalt product plant located at Superior Paving – Culpeper Plant.

8. "VEE" means visible emissions evaluation.
9. "FSO" means the Fredericksburg Satellite Office of the Northern Virginia Regional Office of DEQ, located in Fredericksburg, Virginia.
10. "Superior Paving" means Superior Paving Corp., Box 900, Gainesville, Virginia 20156.
11. "Order" means this document, also known as a Consent Order.
12. "Permit" means Stationary Source Permit to Construct and Operate, which became effective July 5, 2005.
13. "Regulations" refers to the Regulations for the Control and Abatement of Air Pollution for the Commonwealth of Virginia.
14. "VAC" means Virginia Administrative Code.

**SECTION C: Findings of Fact and Conclusions of Law**

1. Superior Paving owns and operates the Facility located at 18244 Germanna Highway, Culpeper, VA 22701 (Culpeper County).
2. DEQ issued Superior Paving a permit to construct and operate a portable RAP plant on July 5, 2005. The portable RAP plant was initially permitted to construct and operate at Superior Paving's Fredericksburg Asphalt Plant (Stafford County).
3. On June 16, 2005, Superior Paving installed a portable RAP plant at their Facility.
4. On July 14, 2005, Superior Paving commenced initial startup of the portable RAP plant.
5. DEQ conducted a site visit to the Facility to investigate potential visible emissions violations from the drum-dryer mixer filter stack associated with Superior Paving Permit No. 40032. DEQ verified during the site visit that Superior Paving was incorporating RAP into their production of asphalt.
6. Superior Paving did not provide the DEQ written notification of the actual date on which installation of the portable RAP plant commenced within 30 days after such date as required by 9 VAC 5-50-50 A and 40 CFR §§ 60.4 and 60.7.
7. Superior Paving did not provide DEQ written notification of the anticipated date of initial startup of the portable RAP plant, postmarked not more than 60 days nor less than 30 days prior to such date, as required by 9 VAC 5-50-50 A.
8. Superior Paving did not provide DEQ written notification of the actual date of initial startup of the portable RAP plant, postmarked within 15 days after such date, as

required by 9 VAC 5-50-50 A and 40 CFR §§ 60.4 and 60.7.

9. Superior Paving did not provide DEQ written notification of the anticipated date of performance test of the portable RAP plant postmarked at least 30 days prior to such date, as required by 9 VAC 5-50-50 A.
10. Superior Paving did not conduct performance test (visible emissions evaluation) of the portable RAP crusher within 180 days after startup of the permitted facility, as required by 9 VAC 5-5-50 and 40 CFR §§ 60.8.
11. DEQ issued Superior Paving a Notice of Violation on June 20, 2006.
12. In a letter dated June 20, 2006, Superior Paving responded to DEQ. Superior Paving provided the date of installation and actual date of startup for the portable RAP plant. Additionally, Superior Paving acknowledged the requirement for a VEE.
13. A stack test protocol for the VEE of the portable RAP crusher has been received by the DEQ on July 5, 2006. A VEE was conducted on the portable RAP crusher on July 12, 2006. The VEE was witnessed by the Department. The facility is in compliance with their VEE testing requirements.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1307 D, §10.1-1309 and § 10.1-1316 C, the Board orders Superior Paving, and Superior Paving voluntarily agrees, to pay a civil charge in the amount of two thousand, eight hundred and eighty-two dollars (\$2,882.00) within 30 days of the effective date of the Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Superior Paving for good cause shown by Superior Paving, or on its own motion after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Superior Paving by DEQ on June 20, 2006. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce this Order. This Order shall not

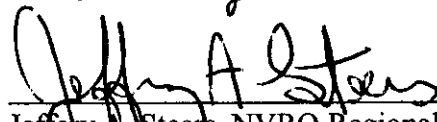
preclude appropriate enforcement actions by other federal, state, or local regulatory authorities, whether or not arising out of the same or similar facts, for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, Superior Paving admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Superior Paving consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Superior Paving declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the State Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Superior Paving to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Superior Paving shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or other such circumstance. Superior Paving must show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Superior Paving shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
  - a. The reasons for the delay or noncompliance;
  - b. The projected duration of any such delay or noncompliance;
  - c. The measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. The timetable by which such measures will be implemented and the date full compliance will be achieved.

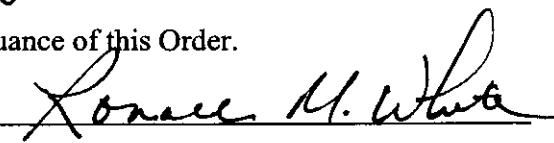
Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Superior Paving. Notwithstanding the foregoing, Superior Paving agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Superior Paving. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Superior Paving from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Superior Paving voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 24<sup>th</sup> day of August, 2006.

  
Jeffery A. Steers, NVRO Regional Director  
Department of Environmental Quality

Superior Paving Corp. voluntarily agrees to the issuance of this Order.

By:   
Title: President  
Date: August 18, 2006

Commonwealth of Virginia  
City/County of Prince William

The foregoing document was signed and acknowledged before me this 18<sup>th</sup> day of

August, 2006, by Ronald M. White, who is  
(name)

President of Superior Paving, on behalf of Superior Paving.  
(title)



Notary Public

My commission expires: 12/31/07